Filed 12/21/12 P. v. Martinez CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. GUMERCINDO MARTINEZ, Defendant and Appellant.	B236989 (Los Angeles County Super. Ct. No. BA382476)

APPEAL from a judgment of the Superior Court of Los Angeles County. Ronald S. Coen, Judge. Affirmed.

Patrick Morgan Ford, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Michael R. Johnsen and Dana M. Ali, Deputy Attorneys General, for Plaintiff and Respondent.

SUMMARY

Defendant Gumercindo Martinez appeals from a judgment entered after a jury convicted him in counts one and two of attempted robbery (Pen. Code, §§ 211, 664),[1] in count three of robbery (§ 211),[2] in counts five and six of assault with a semi-automatic firearm (§ 245, subd. (b)), and in count seven of assault with a deadly weapon (§ 245, subd. (a)(1)). In connection with the attempted robbery and robbery counts and the assault with a deadly weapon count, the jury found true the special allegation that a principal was armed with a firearm within the meaning of section 12022, subdivision (a)(1). He was sentenced to an aggregate term of 12 years and 8 months in state prison.

On appeal, Martinez contends that there was insufficient evidence to support his convictions for robbery (count three) and assault (counts five, six and seven) under an aiding and abetting theory. We affirm.

FACTS AND PROCEEDINGS BELOW

I. Prosecution Evidence

On March 24, 2011, defendant Martinez, co-defendant Jesus Farfan and an unidentified third man robbed Juan Exeni's jewelry repair shop in downtown Los Angeles. Evidence presented at trial demonstrated that victims Exeni and his employee, Enrique Villamil, were working in the shop, and their friend Miguel Jimenez was with them. Martinez, Farfan and the unidentified third man entered the shop, asked for Exeni, and later stated that they were robbing the shop.

The unidentified third man hit Exeni and pushed him to the floor and sat on his back. Farfan was holding a nine-millimeter semiautomatic handgun. Farfan hit Jimenez on the head with the gun, knocking him to the ground. Then Farfan pointed the gun at Villamil, ordered him to kneel and hit him on the head with the gun. While Farfan had Villamil at gunpoint, Farfan demanded that Villamil turn over his jewelry. Farfan took Villamil's chains and rings. Martinez and Farfan demanded that the victims open the

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[1] Further statutory references are to the Penal Code.

[2] Martinez was found not guilty in count four of assault with a deadly weapon.

safe in the shop. Exeni called for help and the unidentified third man took out a chain from his pocket and started choking Exeni with it. Farfan still had the gun pointed at Villamil, and Martinez handed Farfan the ammunition magazine for the gun and told him to "shoot."

Exeni rose up on elbows and knees and knocked the third man backward. Martinez went to help the third man and hit Exeni on the head, knocking him to the ground.[3] Martinez began to tie Exeni's feet but Exeni started kicking and said "I am going to give you everything you want." When Exeni got to his feet, he punched the third man. Villamil struggled with Farfan, attempting to grab the weapon, and a shot went off but did not hit anyone. Farfan let go of the gun and he, Martinez and the third man ran from the shop. Villamil gave the gun to Exeni who ran after the robbers, firing the gun, and Villamil and Jimenez followed. The third man escaped down the stairs, but Martinez and Farfan were cornered in the elevator and were arrested when police arrived.

II. Defense Evidence

Neither Martinez nor Farfan testified on their own behalf.

DISCUSSION

On appeal, Martinez contends that the evidence at trial was insufficient to support his conviction based on an aiding and abetting theory for the robbery of Villamil, the assaults against Villamil and Jimenez with the semi-automatic firearm and the assault against Exeni with the metal chain. Because we find these claims to be without merit, we affirm.

"The proper test for determining a claim of insufficiency of evidence in a criminal case is whether, on the entire record, a rational trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] On appeal, we must view the evidence in the light most favorable to the People and must presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.]

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[3] From the evidence, Martinez may have been holding a metal tool from the repair shop when he hit Exeni but no witness saw Martinez hit Exeni with the tool.

[¶] Although we must ensure the evidence is reasonable, credible, and of solid value, nonetheless it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts on which that determination depends. [Citation.] Thus, if the verdict is supported by substantial evidence, we must accord due deference to the trier of fact and not substitute our evaluation of a witness's credibility for that of the fact finder. [Citations.]" (*People v. Jones* (1990) 51 Cal.3d 294, 314.) "When undertaking such review, our opinion that the evidence could reasonably be reconciled with a finding of innocence or a lesser degree of crime does not warrant a reversal of the judgment. [Citation.]" (*People v. Hill* (1998) 17 Cal.4th 800, 849.)[4]

In terms of aiding and abetting liability, a person who aids and abets the commission of a crime or advises and encourages its commission is a principal in the crime and shares the guilt of the actual perpetrator. (§ 31.) A person aids and abets the commission of a crime when he or she, "'with knowledge of the unlawful purpose of the perpetrator,'" and with "'the intent or purpose of committing, encouraging, or facilitating,'" commission of the crime, "'by act or advice aids, promotes, encourages or instigates, the commission of the crime.'" (*People v. Prettyman* (1996) 14 Cal.4th 248, 259.) An aider and abettor is guilty not only of the offense he or she intended to facilitate or encourage (the target offense) but also of any other crime (the nontarget offense) committed by the actual perpetrator that is a "'natural and probable consequence'" of the target offense. (*Id.* at pp. 260–261.) A criminal act is a natural and probable consequence of the target offense if it is a reasonably foreseeable consequence of that offense. (*People v. Medina* (2009) 46 Cal.4th 913, 920.) "'[T]to be reasonably foreseeable "[t]he consequence need not have been a strong probability; a possible

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[4] "The federal standard of review is to the same effect: Under principles of federal due process, review for sufficiency of evidence entails not the determination whether the reviewing court itself believes the evidence at trial establishes guilt beyond a reasonable doubt, but, instead, whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11.)

consequence which might reasonably have been contemplated is enough. . . .' [Citation]' [Citation]." (*Ibid.*)

Whether a charged crime is a reasonably foreseeable consequence of the target crime is a factual issue to be resolved by the jury and to be evaluated under all the factual circumstances of the individual case. (*Ibid.*; *People v. Nguyen* (1993) 21 Cal.App.4th 518, 531.) "The . . . question is not whether the aider and abettor actually foresaw the additional crime, but whether, judged objectively, it was reasonably foreseeable." (*People v. Prettyman*, *supra*, 14 Cal.4th at pp. 260-262; *People v. Mendoza* (1998) 18 Cal.4th 1114, 1133.) Resolution of this issue depends on "whether, under all of the circumstances presented, a reasonable person in the defendant's position would have or should have known that the charged offense was a reasonably foreseeable consequence of the act aided and abetted by the defendant." (*People v. Nguyen*, *supra*, 21 Cal.App.4th at 531; *People v. Miranda* (2011) 192 Cal.App.4th 398, 408.)

Here, Martinez contends that insufficient evidence supports his convictions in counts five and six for the assaults of Villamil and Jimenez with a firearm and in count seven for the assault of Exeni with a metal chain. He argues that the assaults were "unplanned, unnecessary, unprovoked and not reasonably foreseeable." Reasonable and credible evidence, however, supported the jury's conclusion that a reasonable person in Martinez's position would have or should have known that his armed companions might assault the victims as a reasonably foreseeable consequence of their robbery attempt.

Assaults and attempted murder have been found to be the natural and probable consequence of robbery in a number of cases. (*People v. Prettyman*, *supra*, 14 Cal.4th at pp. 262-263 [citing cases].) Likewise, "[c]rimes involving gun use have frequently been found to be a natural and probable consequence of robbery. [Citations.]" (*People v. Miranda*, *supra*, 192 Cal.App.4th at p. 408.) Viewing the evidence here in the light most favorable to the judgment demonstrates that reasonable and credible evidence was presented upon which the jury could have relied in finding that the assaults were the natural and probable consequence of the armed robbery. First, there was evidence that Martinez was carrying an ammunition magazine for Farfan's gun, suggesting he was

aware that Farfan had a firearm. Second, when Martinez handed Farfan the magazine, he told Farfan "shoot," suggesting that Martinez was not only aware of the possibility, but supported the use of violence against the victims. Third, the three robbers entered and left the jewelry store together, suggesting they were jointly engaged in the robbery including planning before they entered. Fourth, the target store was a jewelry store with building security, suggesting that the three robbers would have (or should have) known violence was likely more necessary for their success than with another type of store. Accordingly, substantial evidence supports Martinez's convictions in counts five, six and seven.

Likewise, substantial evidence supports Martinez's conviction in count three for the robbery of Villamil. Martinez argues that he "could reasonably expect that this would be a standard robbery of a small business, using a gun to persuade the owner to open the safe" and the robbery of Villamil, like the assaults, was "unplanned, unnecessary, unprovoked and not reasonably foreseeable." Here, the evidence showed that Martinez, Farfan and the third man entered the store together and attempted to gain control of the occupants in order to rob the store. A reasonable person in Martinez's position would have or should have known that his armed companions might take valuables from the occupants in the store and not limit themselves to valuables in the safe.

DISPOSITION

We affirm.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, Acting P. J.

JOHNSON, J.